

Service and Facility Specific Policies and Compliance Monitoring TAC Discussion Summary

ESSHB 1688 Guidance

- a) The need for a new and regularly updated set of service and facility specific policies that guide certificate of need decisions [Section 3.2.a], and
- b) Mechanisms to monitor ongoing compliance with the assumptions made by facilities that have received either a certificate of need or an exemption to a certificate of need, including those related to volume, the provision of charity care, and access to health services to Medicaid and Medicare beneficiaries as well as underinsured and uninsured members of the community.[Section 3.2.f].

Policy Questions

A. CON review should be based on:

- 1) A state health plan which is updated at least bi-annually by a commission;
- 2) Detailed criteria, standards and need methodologies, both general and service/facility specific, which are updated at least bi-annually after consultation with a Technical Advisory Committee;
- 3) Data from data systems designed to address the specific services and facilities covered such as CHARS counterpart, and others; and
- 4) Staff analysis followed by public comment process and then final decision by agency designee.

B. The initial steps in the CON analytical process should be:

- 1) Applications analyzed by CON staff;
- 2) Public disclosure of analysis prior to close of public comment;
- 3) Available resources (including staff) with technical expertise are needed for review; and
- 4) Advisors will include other state agencies that purchase, fund or regulate.

C. In addition to the existing criteria of community need, financial feasibility, structure and process of care, and cost containment, additional factors include:

- 1) Information related to availability of less costly alternatives;
- 2) Information related to availability of alternative services;
- 3) Benchmarking using national criteria for quality, UM, and others;
- 4) Verification of Medicare/Medicaid accessibility to all residents (as form of population accessibility);
- 5) Information related to current charity care provision by applicant, as well as projected charity care provision upon completion of project;
- 6) History of responsiveness/effectiveness of existing providers in surrounding area related to ability and willingness to address need;
- 7) Consideration for special populations;
- 8) Potential impact on selected quality indicators for population to be served;
- 9) Impact on training and education programs;

Service and Facility Specific Policies and Compliance Monitoring TAC Discussion Summary

- 10) Exceptions or variations for rural (carefully considered and constructed);
- 11) Information collected during public comment period;
- 12) Impact on public health and current health system infra-structure, e.g. network adequacy; ability of existing providers and facilities to continue to serve the full community, including underserved and uninsured with a range of services;
- 13) Service and facility information from licensure, certification, accreditation and other state agencies;
- 14) Assure level playing field for CON-covered services and facilities, i.e., access, consistency of services and quality for consumer;
- 15) Compliance Consistent with state health plan which is based upon evidenced-based medicine or other outcomes measures where applicable/possible;
- 16) Need to prohibit discrimination in provision of services by applicant; and
- 17) Current utilization data/trends that are reviewed and revised based on changes in market and service delivery patterns over time.

D. CON decisions should be made with the following factors in mind:

- 1) Maintain mechanism for notifying public of Letter of Intent and receipt of application, which may trigger submission of competing applications;
- 2) Provide Request-for-Proposal invitations for CON proposals based on service needs determined in the State Health Plan;
- 3) Use plan-driven review cycles which specify certain decision dates and review periods, such as 90-day cycles with decision dates on the 15th of each quarter rather than provider-driven receipt-of-application individual cycles;
- 4) Batch competing applications for similar service types and geographic areas into the same concurrent review cycles with additional criteria and standards to address differential factors among competing applications; and
- 5) Use expedited abbreviated cycles for applications which comply with the state health plan and have minimal impact on area health services;
- 6) Application fees should be established that are sufficient to cover the ~~operational costs of CON analytical activities~~ specific or direct costs of CON application review (not to cover the costs of the data system, etc.). Funding sources for other related costs and systems, e.g. data system needs to be identified and provided; and
- 7) Timely, accountable and reasonable process in compliance with existing statute/rule.

E. CON decisions should be made in a transparent process:

- 1) Use electronic applications, processing and reporting for public transparency, accountability and public input;
- 2) Provide for public input after release of staff analysis using written response and public hearing formats allowing for public interaction between applicant and decision-maker;
- 3) Assure that burden-of-proof is on the applicant to provide documentation of community need and detailed responsiveness to CON criteria and standards;
- 4) Allow for negotiation prior to final decision in order to adjust project size, cost and scope to accommodate demonstrated needs (needs to occur prior to ex parte or need to reopen for public comment phase);

Service and Facility Specific Policies and Compliance Monitoring TAC Discussion Summary

- 5) Consistency in review and process is critical, timely and with inter-rater reliability among analysts; and
- 6) Require transparency of data related to volume, application types, appeals/resolutions, denials, compliance, and others during the phases of pre-analysis by staff, post-analysis by staff, pre-public comment, and post-public comment.

F. CON decisions should be based on state health plan provisions and the ability of the applicant to meet the community need community responsiveness including a process for determining exceptions or “qualifying conditions”.

- 1) Planning-based, analytically-oriented, evidence-based health care criteria and standards which are updated at least bi-annually;
- 2) Structured to differentiate between competing applications when need is absent to support all appropriate applications;
- 3) It is permissible for an applicant in a sole provider service area to put forth an application to address a community need outside usual CON numerical definition of need; and
- 4) Establish tie-breaking criteria in the situation of “equal” competing applications for a defined need.

G. Conduct post-decision monitoring relative to following factors:

- 1) Retain current process related to monitoring timeframes.
 - 2) Establish the length of compliance accountability and oversight for at least five years after project completion;
 - 3) Maintain communication between affected state agencies to permit cross-check between licensing, certification, registration and/or reimbursement sources about scope of services in compliance with approved application;
 - 4) Establish penalties for non-compliance with provisions and conditions of the CON-approved application such as curtailment of services, fines or others;
 - 5) Continue to provide for periodic progress reports after decision until the service becomes operational, then require documentation of completed costs;
 - 6) Public funding should be established to support monitoring and compliance activities;
 - 7) CON may be defined as a non-exclusive “franchise” for a given service area with a responsibility to monitor the development of an approved service or facility until it is operational, and operation of an approved project for at least five years;
 - 8) A process for monitoring ongoing compliance, with ramifications for non-compliance needs to be part of the entire system conducted in cooperation with licensure; and
 - 9) Conduct post-decision monitoring for at least five years relative to scope of service, cost compliance and performance reporting.
 - 10) Enforcement provisions should be developed with penalties including civil fines, suspensions, probations and CON forfeiture.
- 6) Applicant is providing the approved service based upon assumptions that led to approval, to population promised, at the promised level of charity care, in compliance with conditions added, observing appropriate utilization/volume standards as appropriate in tertiary services, and attaining “special conditions/representations” that resulted in the decision to award.

Service and Facility Specific Policies and Compliance Monitoring TAC Discussion Summary

H. Services requiring CON review should be established and/or enhanced to support application analysis and performance monitoring:

- 1) The data for CON analysis and monitoring should be a subset of a comprehensive data system for state health planning which is a public pathway to improved data collection methodology and reporting consistent with technological advances.
- 2) There should be ongoing CON data collection acquired and reported by an independent state agency using consistent and reliable performance measures. Data should include comprehensive inpatient and outpatient data, financial and utilization information related to charity care, quality, and cost regardless of the service location. Data should be publicly available for applicants and observers to assure transparency within the monitoring system. Data collected in this process may produce indications for quality improvement, performance improvement and other quality of care issues. This should be reported to state planning body and all appropriate agencies whose authority extends to this issue.